

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission
On its Own Motion

-vs-

Commonwealth Edison Company

Investigation into compliance with the
efficiency standard requirement of Section
8-103 of the Public Utilities Act.

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Docket No. 11-0593

**BRIEF ON EXCEPTIONS OF THE STAFF
OF THE ILLINOIS COMMERCE COMMISSION**

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**BRIEF ON EXCEPTIONS OF THE STAFF
OF THE ILLINOIS COMMERCE COMMISSION**

The Staff of the Illinois Commerce Commission (“Staff”), by and through its undersigned counsel, pursuant to Section 200.830 of the Illinois Commerce Commission’s (“Commission” or “ICC”) Rules of Practice (83 Ill. Adm. Code 200.830), respectfully submits its Brief on Exceptions to the Proposed Order (“PO”) issued by the Administrative Law Judge (“ALJ”) on July 18, 2013, in the above-captioned matter.

Exception No. 1 – Three Year Cost-Effectiveness Review

Staff maintains that this proceeding is the appropriate place to review the cost-effectiveness of the programs in ComEd’s portfolio for the three-year period that begins with ComEd’s Plan 1. Staff believes the Commission should initiate a proceeding to review the ex-post cost-effectiveness of the energy efficiency programs to ensure they are providing net benefits to the customers paying for the energy efficiency programs, given

that ex-post cost-effectiveness of ComEd's energy efficiency programs were not reviewed by the Commission during the previous five years. Staff Ex. 2.0 at 10. With respect to this issue, the Proposed Order recommends the Commission find as follows:

The Commission disagrees with Staff on this issue. The independent evaluator's three-year report should provide the Commission with guidance regarding ComEd's energy efficiency program, and it should be examined before any three-year analysis takes place. Therefore, at this time, the Commission declines to act in the manner that Staff recommends.

PO at 11.

The Proposed Order provides little reasoning in support of this finding. It appears to be based upon the premise that Staff wishes to proceed with such reviews without the three-year report of the independent evaluator. That is not the case. Staff recommends that the review should commence upon the receipt of the report. Staff Ex. 2.0 at 10. ComEd has stated that the three-year cost-effectiveness report is now available. Tr. at 41. The Commission, however, had no opportunity in this docket to obtain the guidance recommended by the PO. It is unclear to Staff where the Commission's consideration of this report would take place if not in a docketed proceeding. The Commission must be informed as to whether ComEd's energy efficiency programs are cost-effective; ensuring cost-effectiveness of energy efficiency programs is one of the central purposes of the energy efficiency statute. See 220 ILCS 5/8-103(a). Importantly, direct and indirect costs to consumers are only reduced when the energy efficiency investment is cost-effective (i.e., provides positive net benefits). Staff concurs with the AG when the AG states that the Commission has a role to "ensure ratepayers capture the net benefits they are paying for[.]" and Staff believes the Commission's review of net benefits (i.e., cost-effectiveness)

of the energy efficiency programs that have occurred over the past three-year period is a move towards the AG's recommendation. AG Ex. 2.0 at 15; Staff Ex. 2.0 at 10-11.

Accordingly, the Proposed Order's reasoning with respect to this issue should be rejected. Staff recommends that the Commission adopt the following provisions:

The Commission disagrees with Staff on this issue in that the most efficient approach for facilitation of this review would have been in the instant docket. The independent evaluator's three-year report should provide the Commission with guidance regarding ComEd's energy efficiency program, and it should be examined before any three-year analysis takes place. Therefore, at this time, the Commission declines to act in the manner that Staff recommends. within 90 days of the date upon which this Order is entered, ComEd and DCEO are ordered to file the three-year cost-effectiveness evaluations and annual cost-effectiveness analyses of their energy efficiency programs that were implemented during Plan 1 in Docket No. 07-0540. Further, we direct Staff to submit a report to initiate a proceeding to review the cost-effectiveness of these programs over the life of the programs within 120 days of the date of this Order.

Exception No. 2 - Banking

The PO appears to misunderstand Staff's position with respect to the amount of banked savings allowed. This is entirely understandable, since there is a typo in Staff's Initial Brief ("IB"). The PO states:

Staff recommends approving "the maximum 105 banking allowed," 58408 MWH from PY3, for a cumulative total of 97,777 MWH of net energy savings banked at the end of PY3 in ComEd's service territory.[fn] Staff Initial Brief at 6. Staff, however, did not state what the "maximum 105 banking allowed" means. Nor is it obvious.

PO at 12 (footnote omitted).

As Staff stated in testimony, and as all parties agree, the maximum banking allowed is 10 percent.¹ Staff Ex. 1.0 at 18. The Commission has in the past determined this to be *de minimus*. Commonwealth Edison Co., ICC Order Docket No. 07-0540, 40-41 (February 6, 2008)(“Plan 1 Order”). Therefore, Staff proposes the following changes, omitting footnotes, to the description of Staff’s Position on the banking issue:

Staff recommends approving “the maximum 105 [sic] banking allowed,” 58408 MWH from PY3, for a cumulative total of 97,777 MWH of net energy savings banked at the end of PY3 in ComEd’s service territory. Staff Initial Brief at 6. ~~Staff, however, did not state what the “maximum 105 banking allowed” means. Nor is it obvious. We presume that, by “105 banking allowed,” Staff in fact means “10% banking allowed,” which is the argument advanced in its testimony.~~

Staff takes issue with the PO’s recommendation regarding the carry-over of banked energy savings from one year to the next. In its analysis and conclusions section of this matter, the PO states:

However, as was noted in docket 07-0540, the Commission only approved the “banking” of *de minimus* energy savings. The term “*de minimus*” is a matter that is “so insignificant that a court may over look it in deciding an issue or a case.” Black’s Law Dictionary, 9th ed., 2009). An increase in banked energy savings from 58,408 MWHs to 97,777 MWHs which is an increase in excess of 45% is not *de minimus*. Therefore, the initial ruling in Docket 07-0540 has been violated by inclusion of any energy savings from previous years. Yet, no party explained this discrepancy, even though this carry-over is contrary to the ruling in that docket. The Commission points out that the statute does not allow for *any* “banking” or carry-over of energy savings. See *generally*, 220 ILCS 5/8-103. Therefore any banking of energy saving that is not insignificant in amount violates Section 8-103 of the Act. The Commission therefore iterates that the 10% carryover for energy savings is only from one year to the next. It does cannot

¹ Though it is not a matter of record, Staff notes that the key representing the number five on a keyboard is the same key for the percent symbol.

carry further into a year beyond that point. The correct amount of “banked” energy savings is 58,408 MWHs.

PO at 14-15.

This conclusion is contrary to the Commission’s Order related to banked savings in Docket No. 10-0570. In that Docket, the parties reached an agreement regarding ComEd’s request to accumulate and apply banked savings across years, specifically from PY1 through PY4 for application in PY5. Commonwealth Edison Co., ICC Order Docket No. 10-0570, 53-54 (December 21, 2010). The Commission found that this agreement was “supported by the record, reasonable, and in the public interest.” Id. at 53. The Commission continued:

Banked savings represent an important means for ComEd to achieve its savings goals effectively by encouraging the steady flow of programs in the marketplace and ensuring that retail customers’ investments in energy efficiency are not wasted. The Stipulation furthers those goals.

Id.

Accordingly, the PO inaccurately concludes the Commission’s “*de minimus*” language utilized in the Plan 1 Order bars the accumulation of banked savings from one year to the next. Staff believes it to be apparent that the Commission has explicitly allowed this action through PY4. Therefore, Staff recommends the following changes to the PO; first, on page 12:

2. “Banking” of Energy Savings

In the final Order in Docket 07-0540, (the *PY1 Order*), the Commission determined that it is not possible to have energy efficiency programs without incurring some overruns, or, excess energy savings, in any given plan year. *Plan 1 Order* at 39. That Order acknowledged that Section 8-103(b) did not specifically provide for a utility to carry over energy savings from one year into the next year to meet that year’s statutory energy efficiency or demand response goal. However, it allowed for some “banking”

to the next year of *de minimus* amounts of excess energy savings, in acknowledgement of the fact that *de minimus* banking of energy savings was a practical reality. It capped the “banking” allowed of excess energy savings from one year to the next at 10 percent. *Id.* at 40. ~~However, the “banking” allowed of energy savings was only from one year to the next. The fact that only a *de minimus* amount of “banked” energy savings was allowed establishes that there was to be no carry-over of excess energy savings beyond that point. *Id.*~~ In the final Order in Docket 10-0570, the Commission approved methodology allowing ComEd to accumulate banked savings from one year to the next, from PY1 through PY4, for application in PY5.

In the Analysis and Conclusions portion of the Banking section, Staff recommends the following additional changes regarding the language on banking:

~~C. The Commission notes at the outset that all of the parties seem to have no quarrel with allowing a utility to include energy savings from previous years, despite the plain language in Docket 07-0540 requiring only *de minimus* “banking” of energy savings. This is why, in this proceeding, ComEd’s “banked” energy savings jumped from 58,408 MWhs to 97,777 MWhs.~~

However, as was noted in docket 07-0540, the Commission only approved the “banking” of *de minimus* energy savings. The term “*de minimus*” is a matter that is “so insignificant that a court may over look it in deciding an issue or a case.” Black’s Law Dictionary, 9th ed., 2009). An increase in banked energy savings from 58,408 MWhs to 97,777 MWhs which is an increase in excess of 45% is not *de minimus*. Therefore, the initial ruling in Docket 07-0540 has been violated by inclusion of any energy savings from previous years. Yet, no party explained this discrepancy, even though this carry over is contrary to the ruling in that docket. The Commission points out that the statute does not allow for any “banking” or carry-over of energy savings. See generally, 220 ILCS 5/8-103. Therefore any banking of energy saving that is not insignificant in amount violates Section 8-103 of the Act. The Commission therefore iterates that the 10% carryover for energy savings is only from one year to the next. It does cannot carry further into a year beyond that point. The correct amount of “banked” energy savings is 58,408 MWhs. The Commission notes that all parties which have addressed this issue in testimony agree that ComEd should be permitted to bank the maximum amount of energy savings permissible by law. The Commission agrees with Staff that the methodology approved in the PY2 Order is beneficial in that it gives ComEd an incentive to fill shortfalls by DCEO, thereby helping to ensure that the goals set forth in Section 8-103(b) of the Act are achieved. We concur in the Staff’s position that the statutory energy savings goal of 584,077 MWhs was exceeded by

75,472 MWh in PY3, resulting in a total of 97,777 cumulative banked MWhs, or by 58,408 MWh from PY3. We do so to provide ComEd with incentives to make good any shortfalls resulting from DCEO's failure or inability to meet goals, as noted in our prior orders.

Exception No. 3 – CFL Carryover

The PO appears to misapprehend Staff's position with respect to CFL carryover. With respect to the summarizing Staff's position on the compact fluorescent lamp ("CFL") carryover issue, the PO states:

Because the Commission approved use of the statewide TRM in Docket 12-0528 for ComEd beginning with Plan Year 5, Staff states that its concern is that the statewide TRM only impacts the PY3 purchased CFL light bulbs that are then installed in PY5. Staff Reply Brief at 6.

PO at 18.

This is not Staff's position. Staff recommends the Commission find that the statewide TRM impacts the PY3 purchased CFL light bulbs that are then installed in PY5. As stated in its Reply Brief, Staff is concerned that the TRM only impacts the CFL carryover calculations performed from PY5 purchased CFLs, not the PY3 purchased CFLs that are installed in PY5. Staff RB at 6. Therefore, Staff proposes the following changes to correct the description of Staff's Position on the CFL carryover issue:

Because the Commission approved use of the statewide TRM in Docket 12-0528 for ComEd beginning with Plan Year 5, Staff states that its concern is that the statewide TRM does not~~only~~ impacts the PY3 purchased CFL light bulbs that are then installed in PY5. Rather, Staff contends the statewide TRM would be applicable to PY5 purchased CFL light bulbs and the resulting CFL carryover from those PY5 purchases into PY6 and PY7. Staff Reply Brief at 6.

Furthermore, Staff does not agree with the conclusion reached in the PO regarding the matter of CFL carryover. With respect to the CFL carryover issue, the PO states:

The Commission agrees with ComEd and the AG that it is not necessary at this time to determine an explicit savings approach regarding this issue. The collaborative process in the Stakeholder Advisory Group appears to be addressing this issue. Also, the carryover savings that Staff is addressing will be claimed in PY4 and PY5, which are outside of this proceeding. Further, the AG indicates that the federal standards are in a constant state of flux regarding this issue. Staff presents no indication that the AG's re presentation regarding federal standards is not accurate. The Commission therefore declines to modify ComEd's figures in the manner that Staff recommends.

PO at 20.

The PO fails to adopt the proposal for the calculation of savings from CFLs purchased in PY3 for future use as recommended by Staff, despite the fact that this proposal is consistent with the methodology included in the Illinois Statewide Technical Reference Manual ("TRM") for energy efficiency and approved in Docket No. 12-0528 for PY5. *State of Illinois Energy Efficiency Technical Reference Manual*, ICC Order Docket No. 12-0528, 4-5 (January 9, 2013) ("TRM Order"). Because the TRM was approved for use beginning with Plan Year 5, Staff continues to believe that this proceeding is the appropriate place to direct ComEd to utilize this same methodology for bulbs purchased in PY3. ComEd did not contest the filing of the TRM, nor did any intervenor. The AG agreed with Staff in the instant proceeding that the correct savings calculation should be based upon the installation date of the CFL, and not the date of purchase.

Contrary to the finding recommended in the PO, the collaborative process in the Stakeholder Advisory Group ("SAG") does not address this issue. The SAG has addressed updates to the TRM that affect future program year's (e.g., PY6) savings, but it has not and will not address CFL carryover savings resulting from CFLs purchased in PY3, as this issue is specific to ComEd and not the rest of the Illinois utilities.

The AG states that the baseline practice with respect to CFLs is changing annually and is resulting in lower savings. AG RB at 15. This is not support for the proposition that “the federal standards are in a constant state of flux regarding this issue” as the PO states. PO at 20. The federal standards call for adoption of a phased-in approach where certain bulb wattages are impacted during certain years. Staff Ex. 1.0 at 30. Staff’s testimony describes how the federal standards impact different bulb wattages over the course of several years. Id. The phased in approach to the more stringent efficiency standards for specific bulb wattages was described in the TRM adopted by the TRM Order:

Federal legislation stemming from the Energy Independence and Security Act of 2007 will require all general purpose light bulbs between 40 and 100W to be approximately 30% more energy efficient than current incandescent bulbs. *Production of 100W, standard efficacy incandescent lamps ends in 2012*, followed by restrictions on 75W in 2013 and 60W and 40W in 2014. The baseline for this measure will therefore become bulbs (improved incandescent or halogen) that meet the new standard. TRM at 424 (*emphasis added*).

Accordingly, the AG and Staff are in agreement on the matter of the baseline practice changing annually; however, this is not a valid basis for declining to adopt Staff’s position on the CFL carryover issue, as the baseline will continue to change annually for several years.

Staff believes that a failure to resolve the CFL carryover matter in this proceeding will result in additional litigation of this issue in future proceedings. ComEd has continued to instruct its evaluators that they are not required to comply with the Commission-approved TRM methodology until evaluating CFLs purchased in PY5. Staff Ex. 2.0 at 12. This issue should be resolved expeditiously because savings from CFLs sold through ComEd’s Residential Lighting program element alone represent around half the energy

savings from ComEd's portfolio. Staff Ex. 1.0 at 27. If the Commission does not address the appropriate approach for CFL carryover or the amount of savings allowed for CFL carryover from PY3 purchased CFLs until a future savings docket, Staff recommends the Commission explicitly state in its final order in this PY3 savings docket that the CFL carryover savings included in the PY3 evaluation reports from PY3 purchased CFLs are not approved. Staff 2.0 at 13:262-267.

Accordingly, Staff recommends the following provisions be adopted:

~~The Commission agrees with ComEd and the AG Staff that it is not necessary at this time to determine an explicit savings approach regarding this issue the matter of the CFL carryover for bulbs purchased from PY3 until the TRM applies beginning in PY5. The collaborative process in the Stakeholder Advisory Group appears to be addressing this issue. Also, the carryover savings that Staff is addressing will be claimed in PY4 and PY5, which are outside of this proceeding. Further, the AG indicates that the federal standards are in a constant state of flux regarding this issue. Staff presents no indication that the AG's re-presentation regarding federal standards is not accurate. On a going forward basis, beginning with PY3 purchased CFLs, savings from CFL carryover light bulbs will be measured based on the savings values (e.g., based on the baseline) determined for the installation year. The savings that accrue obviously depend on the year in which the bulbs are installed, and is consistent with our Order in Docket No. 12-0528, *State of Illinois Energy Efficiency Technical Reference Manual* (January 9, 2013). The Commission therefore declines to modify ComEd's figures in the manner that Staff recommends.~~

Conclusion

The Staff recommends that the Commission enter an order consistent with the limitations and qualifications expressed by the Staff in its Initial Brief and as reflected in this Brief on Exceptions.

WHEREFORE Staff of the Illinois Commerce Commission respectfully requests that its recommendations be adopted in their entirety consistent with the arguments set forth herein.

Respectfully submitted,

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